

EXHIBIT 5

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF SOUTH CAROLINA
3 GREENVILLE DIVISION

Case No. 6:19-cv-01567-TMC

4 -----x
EDEN ROGERS and BRANDY WELCH,
Plaintiffs,

5 -against-
UNITED STATES DEPARTMENT OF HEALTH
AND HUMAN SERVICES;

6
7 XAVIER BECERRA, in his official
capacity as Secretary of the UNITED
8 STATES DEPARTMENT OF HEALTH AND HUMAN
SERVICES;

9
10 ADMINISTRATION FOR CHILDREN AND
FAMILIES;

11
12 JOOYEUN CHANG, in her official
capacity as Assistant Secretary of
13 the ADMINISTRATION FOR CHILDREN AND
FAMILIES;

14
15 JOOYEUN CHANG, in her official
capacity as Principal Deputy
Assistant Secretary of the
16 ADMINISTRATION FOR CHILDREN AND
FAMILIES;

17
18 HENRY McMASTER, in his official
capacity as Governor of the
STATE OF SOUTH CAROLINA; and

19
20 MICHAEL LEACH, in his official
capacity as State Director of the
SOUTH CAROLINA DEPARTMENT OF SOCIAL
21 SERVICES,

Defendants.

22 -----x

23 July 8, 2022
24 DEPOSITION OF SHANEKA McDANIEL-OLIVER
25

July 8, 2022

9:02 a.m.

Remote Videotaped 30(b)(6)

Deposition of South Carolina Department
of Social Services by SHANEKA
McDANIEL-OLIVER, taken pursuant to Notice
by Plaintiffs via Zoom before Dawn
Matera, a Certified Shorthand Reporter
and Notary Public for the State of New
York.

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1 A P P E A R A N C E S : (Continued)

2

3 Also Present:

4 ETHAN STRICKLAND, Summer Associate

5 GEORGINA WILSON, Summer Associate,
Cravath Swaine & Moore

6

ROCCO MERCURIO, Videographer

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DAN ACOSTA, Concierge

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1 They still have to go through the
2 licensing process. And then you have
3 your private CPAs, which would be this,
4 our child placing agencies. Miracle
5 Hill, a couple of other ones are, was
6 treated like our DSS foster homes. When
7 they got this centralized board rate,
8 non-therapeutic kids placed in
9 non-therapeutic homes.

10 Q. I see. Thank you for that
11 clarification. Were there some that I
12 think happened prior to this contract
13 that motivated DSS to enter into a
14 standard contract with all CPAs at that
15 time?

16 A. So prior to the 2019 contract,
17 there was, Miracle Hill was receiving a
18 subsidy of \$10 per day per child. Other
19 organizations did not receive that. So
20 in 2019 we made sure that all of the
21 other organizations did receive that same
22 \$10 per day per child.

23 Q. And do you know if there was a
24 reason that only Miracle Hill received
25 that -- is there a name for that \$10 per

1 see.

2 A. So if you are on Article 3,
3 contractor's responsibility.

4 Q. Thank you. That is exactly
5 what I was looking for. So under Article
6 3, number 1, the first responsibility of
7 a contractor reads -- and by the way,
8 does contractor refer to the CPA here?

9 A. Contractor means the CPA. We
10 say provider. Many names.

11 Q. But those are all
12 interchangeable and are referring to the
13 CPAs. Great. So that provision states,
14 "Contractor must make foster homes
15 available for placement of a child upon
16 receiving an approved license."

17 How does DSS understand that
18 requirement?

19 A. That once the foster home is
20 licensed, then the agency is able to
21 place the child.

22 Q. And then "Agency can only place
23 a child if the agency has available
24 foster homes." Is that right?

25 A. The agency can place a child if

1 the agency is, if the CPA has a licensed
2 foster home available for the placing of
3 that child.

4 Q. And so this means that the
5 contractor must have families that can be
6 made available for foster placements?

7 A. This means that the contractor
8 must have foster homes in order for us to
9 place children.

10 Q. And how does DSS understand
11 that contractors meet this requirement by
12 obtaining licensed foster homes?

13 A. All contractors must go through
14 the licensing regulations and licensing
15 process.

16 Q. And the licensing process,
17 you're referring to how foster families
18 get licensed through DSS?

19 A. That is correct.

20 Q. And as part of that process,
21 does DSS --

22 MR. RAY: I'm sorry, was there
23 an objection there?

24 MR. COLEMAN: No, I think that
25 was someone else clearing their

1 throat.

2 MR. RAY: Sorry about that.

3 Q. And as part of that licensing
4 process, does DSS understand that this
5 provision requires CPAs to recruit foster
6 families?

7 A. If the CPA -- I mean, this says
8 that the contractor must make foster
9 homes available for placement of children
10 upon receiving an approved license. So
11 the contractor as a CPA organization,
12 they have to have licensed foster homes
13 in order to place children.

14 Q. And in order to do that, do
15 CPAs have to recruit potential foster
16 families to become available foster
17 homes?

18 A. So a child placing agency is,
19 it is their, I don't know, that's how
20 they -- that's how they have foster
21 homes. I'm just trying to say, there is
22 no other way besides getting and working
23 with families in order for them to be
24 licensed, so have a foster home available
25 for the agency to place children in.

1 Q. So does that mean also that the
2 CPAs must conduct outreach to find these
3 families?

4 MR. COLEMAN: Object to the form
5 of the question.

6 Go ahead.

7 A. So as written in this contract,
8 they must provide training and support to
9 foster families. If they find that a
10 foster family is interested and this is a
11 new foster family, they have that
12 one-on-one mentoring. So I am sure there
13 is outreach, but I am not -- it is not
14 written as such in this contract.

15 Q. And as a part of obtaining
16 available licensed foster homes, does
17 that include screening potential families
18 for suitability to be foster parents?

19 A. So I don't understand what this
20 screening means, because that is not in
21 my area. What does that mean?

22 Q. Is the CPA responsible for
23 making an initial determination of
24 whether a potential foster family they
25 may have recruited would be suitable to

1 go through the licensing process?

2 A. I know that they all have to go
3 through licensing regulations. So that's
4 all I would know, because I am not in
5 licensing. But I am sure that they have
6 to go through the same regulations that
7 any other foster parent and CPA provider
8 would, would have to go through.

9 Q. And if you know the answer to
10 this question, does that include
11 rejecting a potential applicant because
12 the CPA doesn't believe they would be
13 appropriate for the licensing process?

14 MR. COLEMAN: And I'll object.
15 You can ask it again. Can you ask it
16 again. There was a word or two that I
17 think we just had a little garbled and
18 I don't know if you said projecting or
19 protecting.

20 MR. RAY: I'll say that again.

21 MR. COLEMAN: Thank you.

22 Q. Would that include the CPA
23 rejecting a potential applicant that they
24 do not see as suitable for going through
25 the licensing process?

1 Q. So what I was wanting to know
2 is whether that includes race, religion
3 and sexual orientation?

4 A. So it includes facets of all of
5 those things that our kids bring. And I
6 don't want to narrow it down to race,
7 religion. Because our kids bring a whole
8 bunch of stuff with them. And that's on
9 an individual basis, based on their
10 culture and how they were reared in their
11 home.

12 Q. So you would agree it might
13 include those factors, but also include
14 others?

15 A. I am saying it includes
16 multiple factors and multiple facets of
17 culture, and we expect foster parents to
18 be culturally sensitive to whatever that
19 child brings.

20 Q. And that provision also refers
21 to providing training and support to
22 foster families. What kinds of trainings
23 and support does DSS require a CPA to
24 provide?

25 A. So training and support, if we

1 did not list it into this contract, then
2 I cannot tell you. There are licensing
3 requirements that requires training and
4 we have Foster Parent Association that
5 does training. But for me to sit here
6 and tell you to list that, that's not in
7 my capacity.

8 Q. So you wouldn't be able to say,
9 for example, what kinds of training and
10 support around cultural sensitivities DSS
11 requires CPAs to provide?

12 A. So we have a contract with the
13 Foster Parent Association that has
14 trainings in it. There are a list of
15 trainings in that contract. I did not
16 bring that contract with me to go through
17 what trainings that are offered, but I do
18 know that we have Foster Parent
19 Association that has particular trainings
20 related and to assist CPAs. And I am
21 sure that some CPAs may have their own
22 training also. But I can tell you that
23 we have a contract with the Foster Parent
24 Association for training.

25 Q. Do you know if this provision

1 contract, which we call Foster Parent
2 Association that has training in it.
3 Again, I did not bring that contract to
4 go over which trainings there were, but
5 there is that contract that has
6 trainings, and those trainings are geared
7 towards foster parents.

8 Q. Thank you very much. I want to
9 go back to what we were talking about
10 earlier, how this contract has changed
11 over time, and specifically with Miracle
12 Hill. So you had mentioned before that
13 Miracle Hill, and please correct me if I
14 am misstating anything that you said, but
15 I believe you mentioned that at one point
16 Miracle Hill was the only non-therapeutic
17 CPA that was providing foster care
18 services that was being reimbursed for
19 those services; is that right? And that
20 had to do with the missing word in the
21 memo that Miracle Hill felt they -- that
22 they were entitled to those funds?

23 A. So Miracle Hill started
24 receiving the \$10 per day per child. The
25 intent was to go to our therapeutic

1 organizations, not non-therapeutic
2 organizations.

3 And because of the
4 interpretation of that language, Miracle
5 Hill received that \$10 per day per child.

6 Q. And at that time Miracle Hill
7 was providing group home foster care
8 services and was receiving that payment
9 for those particular group home services;
10 is that right?

11 A. So Miracle Hill had a group
12 home at that time and they were under a
13 contract for group home. And they didn't
14 have a therapeutic agency.

15 Q. Does the fact that Miracle Hill
16 was receiving those funds at that time,
17 does that mean that Miracle Hill was the
18 only non-therapeutic CPA providing those
19 foster care services at that time?

20 A. So repeat that?

21 Q. So the fact that Miracle Hill
22 was receiving \$10 per day per child at
23 that time, does that mean that Miracle
24 Hill was the only non-therapeutic CPA
25 providing those foster care services at

1 questions or just for this document?

2 MR. RAY: I might have more
3 questions, I just want to take a look
4 at my notes to make sure.

5 MR. COLEMAN: Okay.

6 THE VIDEOGRAPHER: Now going off
7 the record, the time is 10:27.

8 (Off the record.)

9 THE VIDEOGRAPHER: Now back on,
10 the time is 10:37.

11 BY MR. RAY:

12 Q. I think I just have a few more
13 clarifying questions and I will be
14 finished.

15 So going back to DSS's
16 relationship with non-therapeutic CPAs
17 before this contract was entered into, I
18 believe you indicated that there were
19 other non-therapeutic CPAs providing
20 foster care services, but they weren't
21 receiving the administrative rate for it;
22 is that right?

23 A. So we had other non-therapeutic
24 CPAs that were not receiving the \$10 per
25 day per child, but if they requested it,

1 we would have given it to them also.

2 Q. And does that mean that those
3 CPAs were not receiving funding through
4 DSS before this contract was entered
5 into?

6 A. No, that doesn't mean that. So
7 the provider, the foster homes get a
8 board rate. They weren't receiving the
9 \$10 per day per child. But the providers
10 are given a board rate and those go to
11 the foster homes.

12 Q. And so that's just a different
13 type of reimbursement that the
14 non-therapeutic CPAs were receiving,
15 that's different than the \$10 per child
16 per day?

17 A. So those go straight to the
18 foster homes that CPA providers have
19 licensed. The \$10 per child per day is
20 an administrative rate.

21 Q. I see. And then another
22 question. Sorry, if you can just clarify
23 what a board rate was before this
24 contract was entered into.

25 A. So a board rate, so for a,

1 EXAMINATION (Continued)

2 BY MR. RAY:

3 Q. So after the mistake in the
4 memo that resulted in Miracle Hill giving
5 that administrative rate, did DSS ever
6 tell any non-therapeutic CPA that they
7 would be eligible to receive that rate?

8 A. So I can imagine during that
9 time if a provider asked for that rate,
10 DSS would honor and provide them that
11 rate, that \$10 per day per child.

12 Q. But none of the other CPAs may
13 have known that that rate was available
14 to them?

15 A. So I've asked around, because
16 again in preparation for this, to ask why
17 didn't other providers get this rate, and
18 it is my understanding from asking around
19 that no other providers asked for this
20 rate. And so they were, Miracle Hill was
21 the only one getting the \$10 per day per
22 child until we did an emergency contract.

23 Q. And that might have been
24 because you didn't know about it, but you
25 just didn't know?